

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION THIRTY-THREE**

THE HOPE SCHOOL

Employer

and

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
(AFSCME), COUNCIL 31 1/

Petitioner

DECISION AND DIRECTION OF ELECTION

33-RC-4551

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding2/, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.3/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:4/

All full-time and regular part-time community living specialists, cooks, dietary aides, lead teacher aides, licensed practical nurses, maintenance assistants, maintenance crew employees, maintenance janitorial employees, youth development workers/one on one, physical education teacher aides, teacher aides, utility aides, youth development workers, youth development worker/teacher aides, health information clerks, job coaches, community technology assistants and shift leaders5/ employed by the Employer at its Springfield, Illinois facilities, but excluding office clerical employees, professional employees, risk management employees, guards, managerial employees, confidential employees and supervisors as defined by the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.^{6/} Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by American Federation of State, County and Municipal Employees, (AFSCME), Council 31.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Company**, 394 U.S. 759 (1969).^{7/} Accordingly, it is hereby directed that within 7 days of the date of this Decision two copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the *33rd Region, Hamilton Square, 300 Hamilton Boulevard, Suite 200, Peoria, Illinois, 61602*, on or before December 8, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by December 15, 2000.

Dated December 1, 2000
at: Peoria, Illinois

/s/ Ralph R. Tremain
Ralph R. Tremain, RD – Region 14

1/ The Petitioner's name appears as amended at the hearing.

2/ I have carefully considered the record evidence, the parties' statements and arguments on the record and the briefs filed by the parties.

3/ The Employer is an Illinois not-for-profit corporation engaged in the business of providing residential care and other services to children with multiple disabilities. During the past twelve months, a representative period of time, the Employer received revenues in excess of \$250,000 from the performance of services. During the same period of time, the Employer purchased and received goods valued in excess of \$50,000 directly from vendors located at points outside the State of Illinois. There are approximately two hundred and twenty employees within the unit found appropriate herein.

4/ The parties are in agreement in regards to the scope and the general description of the unit found appropriate herein. The parties stipulated that the classifications included within the unit described herein share a community of interest and are appropriately included in a unit for the purposes of collective bargaining. The parties also stipulated that the head cook, the assistant residential coordinators and the residential coordinator are supervisors as defined by Section 2(11), possessing the authority to hire and fire or effectively recommend, and I so find. The sole issue in this matter involves the status of approximately twenty shift leads which will be discussed below.

5/ As indicated above, the only issue in this matter concerns the status of the residential shift leads. The Employer contends that the shift leads are supervisors within the meaning of the Section 2(11) of the Act and, as such, excluded from the unit found appropriate herein. Contrary to the Employer, the Petitioner maintains that the shift leads are not supervisors and should be included in the unit. At brief, the Employer further contended that if the shift leads were not found to be supervisors, they should be excluded from the unit as management trainees.

BACKGROUND

The Employer commenced operation of its special needs facility in 1957. Its original charter was primarily for individuals who were blind. In the last decade and a half, it has moved to a population that has various developmental disabilities, including mental retardation.

The Employer provides both residential and educational services for youths with disabilities. The Employer maintains “on-campus” and “off-campus” facilities. There are approximately six off-campus homes located on the southeast, southwest and central sections of Springfield, Illinois. They are considered independent in that they are not physically connected to the on-campus unit. No shift leads work in the off-campus homes, and therefore the focus of this decision is directed to the on-campus facility where the shift leads are employed.

The on-campus facility includes a cluster of residential units, which are numbered 1 through 8. These units are also referred to as “cottages.” Approximately 74 individuals are housed in these units. Units 1, 2, 3, 4, 5 and 7 are free-standing. Units 6 and 8 are housed in the same building. There is also an education center on campus which serves as a classroom for approximately 60 to 65 individuals who do not attend school in the local school district. There are other buildings on the campus that house the school’s administration, finance, dietary, nursing and maintenance departments. Each unit or cottage is staffed 24 hours a day, seven days a week, 365 days a year. The staff works in three shifts: 7:00 a.m. – 3:00 p.m.; 3:00 p.m. – 11:00 p.m.; and 11:00 p.m. – 7:00 a.m. There are from nine to thirteen youths residing in each cottage.

The campus operations are headed by the director of safety and risk management. Residential matters are directed by the residential coordinator who reports to the director. There are six assistant residential coordinators who report directly to the residential coordinator. They are scheduled to a shift seven days a week, 365 days a year. The job position requires oversight of the entire residential area of the campus. The assistant residential coordinators are required to fill in for one another in the event of an absence. They do not have offices, but there is a workplace where they can go for the purposes of filling out documents and responding to phone calls. During the course of an average shift, the assistant residential coordinators check on the units periodically, visiting each unit approximately twice a shift. These visits typically last about fifteen minutes. As indicated above, the assistant residential coordinators have been stipulated to be supervisors within the meaning of the Act.

The shift leads report directly to the assistant residential coordinators. The Employer also employs a number of youth development workers who have day-to-day responsibilities for caring for a

group of youths within a unit. The record does not clearly establish the actual number of youth development workers.

The Shift Leads

The shift lead classification is a recent creation on the part of the Employer. During the months of June, July and August of 2000, the Employer began to change its on-campus staffing utilizing shift leads instead of team leaders. It appears from the record that the fundamental difference between these two classifications (the Employer uses the term “models”) involves shift coverage. The team leaders had a 24-hour responsibility over a unit and had team assistants who functioned on the off-shifts of the team leader. The Employer instituted the change so that it would have a person on-site and on-floor performing functions involving direct care and providing direction and leadership for each unit for each shift. At the time of the hearing, there were twenty shift leads, one for each shift at each of the seven units or cottages on campus except for the third shift at unit 6. The shift leads and the youth development workers provide direct care to the residents. State licensing requirements mandate that there should be no less than one direct service employees for each 2.5 residents. Shift leads are counted as direct service employees in fulfilling this requirement. It appears from the record that there are approximately three to four youth development workers assigned to each shift lead. No other staff members are assigned to the shift leads. While other staff members visit the cottages to perform services from time to time, the youth development workers and the shift leads are the only staff assigned to the cottages to perform direct care duties.

The shift leads’ job description lists the essential functions of the position:

1. Ensures care and programming are provided for all youth within the home and works collaboratively with Youth Development Workers and administrative staff in carrying out all program plans and behavior programs of all youth within the home ensuring consistency in program implementation.
2. In cooperation with the Assistant Residential Coordinator ensures a safe, clean, odor, smoke-free home like environment for the youth.
3. Assists in the coordination, assignment and supervision of such unit organizational procedures as task assignments, group assignments, youth census reports, etc.

4. Completes required documentation and monitors for accuracy and promptness of all required records and data maintained in the home.
5. Actively seeks supervision, consultation, and/or assistance as needed.
6. Assists in the coordination and provision of the youth's individualized habilitation plan and/or training programs working with, but not limited to the Assistant Residential Coordinator, Program Coordinator and Behavioral Specialist.
7. Assists the Assistant Residential Coordinator in the development and implementation of structured and age appropriate games and activities during periods of leisure time.

A great majority of the shift leads' time is involved in the performance of the direct care duties.

If a youth development worker is absent or if there is understaffing, the shift lead will perform the needed direct care duties. Conversely, if the shift lead is absent, the youth development workers assigned to the cottage for that shift divide up the shift lead duties and perform them. While the shift lead has responsibility for the daily work duties of the youth development workers on their shifts, more often than not the assignment or tasks of caring for residents is by consensus and by daily routine. In assigning residents to a youth development worker new to the unit, the shift leader considers factors such as gender and size of the employee and the residents as well as the particular needs of the residents.

The shift leads do not make decisions regarding the assignments of the youth development workers shifts or to particular cottages. This is done by the assistant residential coordinators and/or the human resources department. Resident schedules are developed and issued by program coordinators. Any changes to schedules must be approved by the appropriate administrative official. For instance, if staffing is inadequate for a field trip, the shift lead would notify the risk management department of the problem and they would make the determination as to the appropriateness of canceling the activity.

The shift leads play no role in the hiring of employees. They do not prepare or sign employee evaluations. The assistant residential coordinators prepare the evaluations of the youth development workers. The assistant residential coordinators generally get input from the shift leads and sometimes other staff members, such as teachers, in preparation of the evaluations. The shift leads do not make decisions or recommendations regarding terminations or discipline. Final action in regards to discipline is taken by the Employer's executive director. The Employer's disciplinary system has

evolved to a committee system where the committee reviews potential discipline and makes recommendations to the executive director. If a youth development worker was involved, the committee would get input from the shift lead in regards to the incident when appropriate. Shift leads would play a similar role in the case of an involuntary transfer of a youth development worker because of conflicts with residents or staff.

The shift leads are paid one dollar an hour more than youth development workers. The shift leads are hourly paid and enjoy overtime benefits on the same basis as other hourly employees of the Employer. Assistant residential coordinators are salaried. The shift leads receive the same benefits as others employed by the Employer. Since the classification was instituted, there have been several meetings deemed “shift lead meetings” wherein the shift leaders met with the resident coordinator and assistant resident coordinators. Shift leaders do not have the authority to grant overtime, or time off, or schedule vacations for youth development workers. They can delay lunch breaks for youth development workers when there is a staffing shortage, but if there is a conflict or dispute regarding lunch breaks, the assistant residential coordinator is consulted and decides the matter.

Discussion and Determination

Supervisory status under the Act depends on whether an individual possesses authority to act in the interest of the employer in the matters and in the manner specified in Section 2(11) of the Act, which defines the term “supervisor” as:

The term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet this definition, a person needs to possess only one of the specific criteria listed, or the authority to effectively recommend, so long as the performance of that function is not routine but requires the use of independent judgment. See Ohio Power Co. v. NLRB, 176 F.2d 385 (6th Cir. 1949), cert. Denied 338 U.S. 899 (1949). See also Queen Mary, 317 NLRB 1303 (1995).

Applying Section 2(11) to the duties and responsibilities of any given person requires that the Board determine whether the person in question has authority to use independent judgment in performing any of the functions listed in Section 2(11), and to do so in the interest of management. Hydro Conduit Corp., 254 NLRB 433, 437 (1981). As pointed out in Westinghouse Electric Corp. v. NLRB, 424 F.2d 1151, 1158 (7th Cir. 1970), cited in Hydro Conduit Corp.: “the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect.”

In enacting Section 2(11), Congress emphasized its intention that only supervisory personnel vested with “genuine management prerogatives” should be considered supervisors, and not “straw bosses, leadmen, setup men and other minor supervisory employees.” See Senate Rep. No. 105, 80th Cong., 1st Sess. 4 (1947). The Board has long recognized “there are highly skilled employees whose primary function is physical participation in the production or operating processes of their employer’s plants and who incidentally direct the movements and operations of less skilled subordinate employees,” who nevertheless are not supervisors within the meaning of the Act since their authority is based on their working skills and experience. Southern Bleachery & Print Works, Inc., 115 NLRB 787, 791 (1956), enf’d 257 F.2d 235 (4th Cir. 1958), cert. denied, 359 U.S. 911; Gulf Bottlers, Inc., 127 NLRB 850, n. 3, 858-861 (1960), enfd. sub nom, United Brewery Workers v. NLRB, 298 F.2d 297 (D.C. Cir. 1961).

In addition, the party seeking to exclude an individual from voting for a collective bargaining representative has the burden of establishing that the individual is ineligible to vote. Golden Fan Inn, 281 NLRB 226, 229-230 fn. 12 (1986). As stated in The Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1989): “in representation proceedings such as this, the burden of proving that an individual is a supervisor rests on the party alleging that supervisory status exists.” Tucson Gas & Electric Co., 241 NLRB 181 (1979), Dickinson-Iron Agency, 283 NLRB 1029, 1034 (1987).

I find that the shift leads do not possess any of the necessary indicia set out in Section 2(11) of the Act and are not supervisors within the meaning of the Act. In reaching this finding I first note that the record reveals no evidence that the shift leads hire, transfer, suspend, lay off, recall, promote, discharge, reward or discipline other employees. The Employer maintains that the shift leads make

effective recommendations in regards to discipline. Contrary to the Employer, the record discloses that the shift leads do not make recommendations, but rather report incidents to the assistant residential coordinators and provide information, upon request, to the Employer's disciplinary committee. In these circumstances, communications by shift leads to assistant residential coordinators and to the committee amounts only to a reporting function and does not establish supervisory status Express Messenger Systems, 301 NLRB 651, 653-654 (1991). See also Pepsi Cola Bottling Co., 154 NLRB 490, 493-494 (1965).

I also disagree with the Employer's assertion that the shift leads role in the evaluation process amounts to an effective recommendation to reward or otherwise confers supervisory status to them. The fact that assistant residential coordinators seek and obtain input from the shift leads in conducting performance services does not confer supervisory status in the absence of evidence that the input constitutes an effective recommendation for a pay increase, promotion, or other reward. Arizona Public Service Co., 310 NLRB 477, 481 (1993). The record reveals an absence of such evidence.

The record does show that the shift leads have authority to direct the youth development workers in regards to their daily tasks and activities. The shift leads also make assignments in regards to which residents are assigned to youth development workers. However, the Board clearly holds that employees that routinely direct other employees based on a higher skill or experience level are not supervisors. The issue is whether they exercise independent judgment in the discharge of these responsibilities. The assignment of residents to youth development workers on the basis of size, gender and similar considerations or the delay of lunch times do not involve independent judgment as is contemplated by the Act. Similarly, the apportionment of daily patient care tasks, often by consensus and/or as a matter of routine, does not establish a requisite level of independent judgment to confer supervisory status. St. Francis Medical Center, 323 NLRB 1046 (1997); Illinois Veterans Home, 323 NLRB 890, 891. See also Ten Broeck Commons, 320 NLRB 806, 811 (1996); Provident Hospital, 320 NLRB 717, 730-734.

The Employer also urges in its brief consideration of the fact that there would be supervisory presence at each unit for only approximately thirty minutes each shift if shift leaders were deemed non-supervisory. However, while the assistant residential coordinator generally visits each unit or

cottage twice a shift for approximately fifteen minutes, they are available and can be contacted throughout the shift. I also note that if the shift leads were deemed to be supervisors, there would be approximately one supervisor for every three youth development workers, which would be an unrealistic ratio in view of the Employer's operations.

For all other reasons, I find the shift leads not to be supervisors under Section 2(11) of the Act. Their responsibilities and authority are those typical of those of non-supervisory lead persons and they do not exercise the requisite independent judgment in the performance of their duties to be found to be supervisors as defined in the Act.

The Contention That The Shift Leads Should Be Excluded As Management Trainees

As indicated above, at brief, the Employer maintains that if the shift leads are not found to be supervisors, they should be excluded as "management trainees". The Board has excluded individuals designated as management trainees who have participated in the work of unit employees only as part of their training preparing them for management positions. Montgomery Ward & Co., 131 NLRB 1436 (1961). The Board held that such employees have interests more closely aligned with management than with those of unit employees. The Board in Curtis Industries, 218 NLRB 1447 (1975) set out the basic characteristics of management trainees:

"All of the management trainees either advance into management positions or leave the Respondent's employ. Management trainees are recruited and hired because of their special educational background; accept employment with a designated managerial goal in mind; remain with the Employer only if they successfully complete the program; are paid a substantially higher rate of pay than regular employees in equivalent positions; and have dissimilar conditions of employment from those of regular employees. Moreover, the management trainees are given the same fringe benefits as supervisors and managerial employees rather than those enjoyed by regular employees."

Clearly shift leads do not come close to fitting the profile of a management trainee excludable under Board precedent. There is no evidence that the shift leads are involved in any program that would place them in managerial positions in any planned duration of time. The fact that the Employer has and is further developing a training program for shift leads that has a "leadership" and "supervision" component does not convert shift leads into management trainees that should be

excluded from the unit herein. The record shows that the shift leads and the youth development workers spend virtually all their time performing similar tasks, side by side, under the same working conditions in the Employer's cottages. Accordingly, I find that the shift leads share a strong community of interest with unit employees and include them in the unit found appropriate herein.

6/ Your attention is directed to Part 103, Subpart B, Section 103.20 of the Board's Rules and Regulations, Series 8, as amended, which provides, inter alia, that employers shall post copies of the Board's official Notice of Election in conspicuous places at least three full working days prior to 12:01 a.m. of the day of the election, that failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed, and that an employer shall be estopped from objecting to nonposting or late posting of Notices unless it notifies the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received the Notices. You may wish to review the above rule in its entirety so that you are fully aware of its complete contents and the obligations imposed by it.

7/ The full first and last names and addresses of all eligible voters must be filed by the employer. North Macon Health Care Facility, 315 NLRB 359 (1994).

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